

# EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

\* \* \* \* \*

THE CITY OF HUNTINGTON,

Plaintiff,

vs.

CIVIL ACTION

NO. 3:17-01362

AMERISOURCEBERGEN DRUG  
CORPORATION, et al.,  
Defendants.

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CABELL COUNTY COMMISSION,  
Plaintiff,

vs.

CIVIL ACTION

NO. 3:17-01665

AMERISOURCEBERGEN DRUG  
CORPORATION, et al.,  
Defendants.

\* \* \* \* \*

Videotaped and Zoom video conference  
deposition of JAMES RAFALSKI taken by the Defendants  
under the Federal Rules of Civil Procedure in the  
above-entitled action, pursuant to notice, before  
Jennifer Vail-Kirkbride, a Registered Merit  
Reporter, on the 11th day of September, 2020.

1 matter and then you had questions to clarify with  
2 him?

3 A. I believe that's the sequence; yes, sir.

4 Q. And what were those questions? What were  
5 the points you wanted to clarify?

6 A. Uh, the one point I remember is on the  
7 Masters Methodology B, or we'll call it maybe  
8 Masters B, I was -- wanted to make sure on the  
9 triggering order that he was -- his calculation on  
10 dosage units was the whole order and not the amount  
11 that just was above the triggering amount, if that  
12 hopefully makes sense to you.

13 Q. It does, yes. And you weren't sure of that  
14 before you reached out to him? [overtalking]

15 A. Well, no, that's why I reached out, if I  
16 was sure, then I wouldn't have done it.

17 Q. That's why that was an easy  
18 question. Collectively your different methods flag  
19 tens of millions of orders; correct?

20 A. They do.

21 Q. You've not reviewed each of those flagged  
22 orders; correct?

23 A. No, sir.

24 Q. Do you know how many of the tens of

1 millions you've actually reviewed?

2 A. Yes, I have not reviewed any of them.

3 Q. None of the initial orders, none of the  
4 follow-up orders; correct?

5 A. No, sir.

6 Q. So you did not personally determine whether  
7 any of the flagged orders when you look at them, you  
8 actually consider them to be suspicious; correct?

9 A. Well, I think the fact that they are  
10 identified by the trigger, the algorithm, makes --  
11 makes them not a suspicious order.

12 Q. Okay. Did you individually review any of  
13 them to see if you just looked at the order on its  
14 face whether you would consider it to be suspicious?

15 A. No, sir.

16 Q. Did you individually look at any of them to  
17 consider just based on the information you had about  
18 the actual order whether you would consider it to be  
19 likely to be diverted?

20 A. Can you say that one more time, please.

21 Q. Sure. Did you look at the individual  
22 orders to consider whether based on the information  
23 actually reflected in the individual orders, you  
24 would make the judgment that there were likely to be

1 or two -- it's kind of a compound question. First,  
2 the algorithm's applied to the data and that's what  
3 triggers the order. That's what brings it to my  
4 report or triggers it and identifies it. Then  
5 subsequent to that would -- you're asking about the  
6 evaluation of that specific order.

7 Q. No, I am asking actually what's intended to  
8 be a really simple question so maybe I can reframe  
9 it.

10 You've got tens of millions of orders  
11 you identify here; right?

12 A. I do.

13 Q. Did you look at any of those tens of  
14 millions of orders in terms of the actual facts of  
15 those orders to make a judgment that as to any one  
16 of those tens of millions of orders, looking at the  
17 order itself you believe that order is likely to be  
18 diverted?

19 A. There -- I cannot definitively look at one  
20 specific order and tell you that specific order was  
21 diverted, if that's your question. I did not do  
22 that and I couldn't -- I did not do that and I could  
23 not do that.

24 Q. That's not my question. What I'm asking is

1 did you actually evaluate any single order and make  
2 a judgment, "This order is likely to be diverted,"  
3 based on the facts of looking at this order,  
4 separate and apart from your flagging exercise. Did  
5 you look at any orders to see "Based on the facts of  
6 this order I can come to a judgment that it's likely  
7 to be diverted"?

8 A. I think my opinion is that more likely than  
9 not all of those orders are diverted.

10 Q. Well, that's what I'm going to come to. My  
11 question is did you actually look at any of the  
12 individual ones to say, "When I look at this  
13 individual one, this looks like it's likely to be  
14 diverted"?

15 A. No, sir, not individually.

16 Q. Okay. Did you review the diligence files  
17 for every one of these tens of millions of flagged  
18 orders?

19 A. There -- that wouldn't be possible.

20 Q. For example, you can't say you reviewed the  
21 complete diligence files for McKesson in Cabell  
22 County; correct?

23 A. Well, that's a different question, is that  
24 outside of discussing the trigger orders?

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4  
5 STATE OF WEST VIRGINIA

6 COUNTY OF BROOKE, to wit;  
7  
8

9 I, Jennifer Vail-Kirkbride, a Notary Public and  
10 Commissioner within and for the County and State  
11 aforesaid, duly commissioned and qualified, do  
12 hereby certify that the attached deposition  
13 transcript of JAMES RAFALSKI meets the requirements  
14 set forth within article twenty-seven, chapter  
15 forty-seven of the West Virginia Code to the best of  
16 my ability at the time I submitted the same to  
17 Realtime Reporters, LLC, 713 Lee Street, Charleston,  
18 West Virginia on September 15, 2020, for  
19 distribution. Said transcript was duly taken by me  
20 and before me at the time and place and for the  
21 purpose specified in the caption hereof, the said  
22 witness having been by me first duly sworn remotely  
23 during the pandemic.

24 I do further certify that the said deposition

1 consisting of 409 pages was correctly taken by me in  
2 stenotype notes, and that the same were accurately  
3 written out in full and reduced to typewriting and  
4 that the witness did request to read his transcript.

5  
6  
7 My Notary Public commission expires: August 26,  
8 2023.

9 My West Virginia Commissioner commission expires:  
10 February 15, 2022.

11 Given under my hand this 15th day of September,  
12 2023.

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17 Registered Professional  
Reporter

18 RMR, CRR, FCRR, RPR, WV-CCR  
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